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THE PROFESSION IN THE POLITICAL HISTORY OF THE UNITED STATES.

It hardly seems possible that thirty years have passed since I sat in the body of the old Center Church and listened with the other members of the graduating class of '76 to the address delivered on that occasion by one of Yale's famous sons.

I have always been a firm believer in the Yale pluck and the Yale grit—pluck and grit which time and again have forced the Yale boat first across the line and secured the necessary touch-down or the winning run when defeat seemed almost certain. I have always cherished a deep affection for the old Yale institutions and have always had a warm spot in my heart for Yale men, and so when Dean Rogers extended to me an invitation to deliver the annual address this year, I accepted his invitation with pleasure feeling that I should like at least once more to visit the old scenes and renew old friendships.

There are many interesting subjects which doubtless will engage your attention in the near future of which, as head of that department of the government over which I have the honor to preside, I have information, and about which I might properly on this occasion talk to you. There is the great and new policy of governmental control of corporations engaged in interstate commerce. There is the control of vessels in the interest of adequate protection to life and property. There is the promotion and development of our internal and foreign commerce, the extending of our manufacturing interests and the establishing of new markets for our manufactures—manufactures, the annual value of which reaches the gigantic sum of \$15,000,000,000, a value approximately equal to that of the manufactured products of Great Britain, France and Germany combined, and then there is the great and important question of restriction, in the interest of American citizenship and American labor, of foreign immigration. Any of these subjects would afford material for a useful and interesting address on this occasion, but inasmuch as you young men have chosen the law as your profession, it seemed to me, when I came to consider the subject of this address that it might be more interesting to you to have me say something on this occasion concerning the extraordinary part that the legal

profession has played in the political history of this country. It may well be said that from the Declaration of Independence down to the present time the lawyers have been the mainstay of this government, for it was their genius that conceived and brought into existence the Declaration of Independence, and it was their knowledge of English law and institutions that gave to us the Constitution which stands to-day as the world's masterpiece of statesmanship.

In discussing this subject I shall attempt to measure the service and the influence of the lawyer by certain concrete standards in comparison with, but not in disparagement of, the similar service and influence of the men of other professions and occupations. When we look beneath the surface of events and examine into the personal history of the men who are prominent in them, we discover the unique part which the lawyer has played in the constitutional, executive, legislative and judicial history of this nation and we are necessarily driven to the conclusion that this is no accident or coincidence. There is something about the profession of the law which not only attracts the best intellects but especially equips the men trained in that profession to render the most effective public service. A long procession of men has passed in and out of the public since the government was founded and the vast majority of them have gone from the state of contemporary fame into the semi-oblivion of the family genealogy, the Congressional Records and Lanman's Annals of Congress. In the latter publication appear the names of some 6,600 men, each of whom, in his day, possessed sufficient standing and influence in his own community to lead to his selection out of thousands and hundreds of thousands of neighbors to represent his state or district in the halls of Congress. Many of these men were sent to Congress, not once, but many times, and many have died in harness after long years of useful, effective and patriotic service.

But as we turn the pages of this volume, we are impressed, first with the comparatively small number whose services have been so exceptional in character, and so potential in determining great results, that their names stand out on the blackboard of history and are recognized by students as decisive factors in our national development.

If our examination is confined to the men whose names are familiarly known to the average citizen; who are frequently referred to in the historical works of schools, colleges and universities; whose names figure in the text-books on American history, the number is still further reduced. We cannot count them on the fingers of both hands, or in twice the number of fingers; but if you were called

upon, off-hand, to name the one hundred men who have rendered the greatest service to the nation, it would trouble you to enumerate the full number; and after the first fifty names there would be no agreement among you as to the second fifty. But in one respect there would certainly be agreement of the first fifty upon whom all agreed, ninety per cent would be lawyers, and of the second fifty, upon whom very few of you would agree, ninety-five per cent of the names suggested would be those of men who came into the public service out of the legal profession.

That profession, gentlemen, and I make this statement without fear of contradiction, has contributed more towards the building up of our constitutional system and the orderly and effective development of the American idea of the representative form of government than all other professions and occupations combined. This fact was recognized and accounted for by the first and ablest critic of American institutions, Alexis de Tocquevill, when he said that "the authority the Americans have intrusted to members of the legal profession and the influence they exercise in the government is the most powerful existing security against the excesses of democracy."

These words were written in the early thirties and seventy-five years of further experience have but confirmed and emphasized them. The demonstration of the fact carries us back into the colonial days and into the momentous period when the principles that led to the Declaration of Independence and that are embedded in the Constitution were taking form and shape.

Six of the fourteen presidents of the Continental Congress were lawyers. Of the fifty-six signers of the Declaration of Independence, twenty-eight were lawyers. Sturdy John Hancock, whose name was writ first and largest on the immortal document, was one of the merchant princes of colonial Boston, and there were farmers and doctors and other professional men among them.

It was a lawyer who first moved in the Continental Congress that the thirteen colonies be declared independent. The committee appointed to draft the declaration, with but one exception, namely, Benjamin Franklin, were lawyers, and a lawyer, Thomas Jefferson, the chairman of the committee, drafted the declaration which, after approval by the committee, was reported to and adopted by the Congress. The next historic group who set another mile-stone in our history was the convention which framed the Federal Constitution.

Fifty-five of the men elected to that body qualified and participated in its proceedings, and of these thirty-four were lawyers. The

preponderance of lawyers in that convention was not surprising in view of the exceptional character of the duty entrusted to it. Proper equipment for that duty could only come from a thorough training in the law in the broadest significance of the word. These men were met to frame a form of government which should embody the best results of the experience of all the world, in all the experiments in representative and constitutional government anywhere undertaken from the beginnings of recorded history.

They needed knowledge of every system of administration, of legislation, of jurisprudence, which had ever been tested either to failure or to success. They needed knowledge of the common law which had embedded itself in the custom of the nations, and especially that of England, which had governed the colonial affairs in each of the original thirteen colonies.

The Constitution evolved by this Convention was an epitome of the experience in government which had preceded its construction, supplemented by an adaptation of the several colonial or state systems in vogue to the Federal system to be superimposed thereon. Only a man learned in the law and especially versed in the judicial experience of Europe was competent to approach the problems that confronted the Constitutional Convention.

The close student of the debates out of which was forged the Federal Constitution, knows that the instrument in its final shape is almost wholly the work of its members with legal training. They comprised nearly two-thirds of the actual membership; they represented nine-tenths of its effective and concrete work. Nor is it surprising, in view of his omniverous reading and remarkable knowledge of historical experience and experiment along these lines, that Alexander Hamilton should have exerted so great an influence in the framing of the Constitution. Not even yet, after the lapse of all these years, do we recognize the fullness of our debt to that wonderful mind. The Federal Constitution was the contribution of the legal profession to the new-born nation and it has been well designated "as the most wonderful product struck off at a given time by the brain and purpose of man."

Washington, the first president, surrounded himself with a notable cabinet, all of whom were lawyers save Samuel Osgood and General Henry Knox, the great soldier and Washington's personal friend. In some measure at least the success of that first administration—its self-poise and conservatism, directing the ship of state through waters never navigated before—was due to the fact that among his counsellors were two men so diametrically opposite in

their intellectual point of view as Hamilton and Jefferson; and that Washington knew how to steer the middle course between them.

No less notable was his second cabinet in which ten persons served in all, six of whom were lawyers.

We must come forward seventy years to the period of another crisis in our history not less trying and tempestuous to find this situation duplicated. Abraham Lincoln surrounded himself by a cabinet, every member of which except Simon Cameron, whose stay was brief, had won distinction primarily through his successes at the Bar. The future historian, without in any way detracting from the consummate genius of Lincoln, himself a great lawyer, or from the influence of his own unique personality in that supreme crisis, will accord to three of the eminent lawyers who advised him, Seward, Chase and Stanton, a larger share of responsibility than has yet been awarded them.

Twenty-five men have been called upon to preside over the destinies of this nation since it was founded. Twenty-one of them the first choice of the people, four succeeding to the office on the death of the president. Of these twenty-five presidents twenty were trained in the profession of law. Five only came from all other professions and occupations combined. Eighty per cent of the presidents were bred lawyers. Of the small remainder four were soldiers, great and successful generals in the few wars in which the United States has been compelled to engage, and one of them, how shall we designate him, author, publicist, man of affairs, student of civic conditions, man of transcendent genius. What a wonderful lawyer the profession missed when Theodore Roosevelt did not have time to include the study of law among his other manifold mental activities.

These twenty-five presidents have chosen for cabinet advisers, two hundred and thirty-eight persons in all. Of these two hundred and thirty-eight cabinet officers one hundred and eighty-three were lawyers, leaving only fifty-five belonging to other walks in life.

The lawyer has been no less strikingly preferred for the great office of the vice-presidency. Twenty-six men have been elected to that office, nineteen of whom were lawyers and seven of whom came from all other professions and occupations.

Let us then sum up this rather noteworthy record. Of the presidents, eighty per cent have been lawyers; of the vice-presidents, seventy-three per cent and of the cabinet officers, seventy-seven per cent. The House of Representatives has had thirty-five speakers, of whom twenty-five or seventy-one per cent were lawyers. It must

be something more than a coincidence that these percentages run so equal.

When we come to consider the legislative branch of the government we find that the occupations of the members of Congress during the whole period of our constitutional government reveal the preponderating influence of the legal profession in a manner only less striking than the executive branch. I have not studied the details for all of the Congresses, but I have gone into the analysis far enough to show that this preponderance has not greatly varied in the fifty-nine Congresses. There were seventy-two members of the first Congress, and forty-five of them, or sixty-two and five-tenths per cent were lawyers, many of them the men who had been trained to their work by service in the Convention which framed the Constitution. All other occupations combined furnished but twenty-seven members of that historic body representing thirty-seven and five-tenths per cent of the number.

Jumping forward eighty years to the forty-first Congress elected in 1870, when the membership had increased to three hundred and seventeen, we find one hundred and eighty-six lawyers in the two branches, or fifty-eight and seven-tenths per cent. All the other occupations combined supplying but one hundred and thirty-one senators and members. Twenty years later in the fifty-first Congress, elected in 1890, the membership had increased twenty-five per cent to four hundred and fifteen and of this number two hundred and eighty-nine or sixty-nine and six-tenths per cent were lawyers. Their preponderance was thus increasing and the statistics of the present Congress, the fifty-ninth, indicate that the public confidence in the lawyer, as the citizen best equipped to render effective service in legislation is confirmed and is increasing. The fifty-ninth Congress has four hundred and seventy-six members of both Houses of whom three hundred and twenty-three are lawyers, representing sixty-seven and six-tenths per cent of the entire membership.

It remains now to make brief reference to the *personnel* of the third co-ordinate branch of the government, the judiciary. The crowning defect in the government under the Articles of Confederation was the absence of any judicial power. The Constitution remedied that defect and gave to us the Supreme Court of the United States which has been well termed "the bulwark of American liberty."

All of the judges have necessarily been drawn from the legal profession. Names like Marshall, Story and Chase recall the vital

service the Supreme Court has rendered in the critical periods of our history. They have blazed the narrow pathway of federal development; they have outlined and perpetuated the proper equilibrium between these two perpetually antagonistic elements in our dual system; they have marked out the limitations upon representative government with a clearness never before defined. In the brief period of our national existence the Federal Constitution has been perfected, its methods of administration improved, its faculties enlarged, its powers tested, and the limits of its authority and jurisdiction ascertained and established, and this we owe, not wholly, but in a pre-eminent degree to the Federal Judiciary, a body of quiet, trained, conservative men, of cloistered life and patriotic instincts both in the higher and lower courts, the great mass of whom are unknown to the general public even by name.

It is not so easy to trace the influence of the lawyer in the affairs of the states. Many great men whose names are household words have filled the governors' chairs. Many of those whose service in the national field has been distinguished were trained and developed for that higher service in the state legislatures. But such statistics as are available reveal that the lawyer occupies no such unique relationship to the government of the states as has appeared in that of the nation. His numerical strength in the state legislatures is often rather below than above the normal. From such of the state year-books as carry these details, the year 1900 being taken as a fair illustration, the following table has been compiled which may be accepted as indicative of the situation in all the states.

Connecticut,	total membership, 276, lawyers, 22, per cent of total, 8.
Michigan,	total membership, 132, lawyers, 28, per cent of total, 21.2
Minnesota,	total membership, 182, lawyers, 46, per cent of total, 25.3
New Jersey,	total membership, 93, lawyers, 39, per cent of total, 41.9
Ohio,	total membership, 150, lawyers, 40, per cent of total, 27.7
Pennsylvania,	total membership, 254, lawyers, 46, per cent of total, 18.1
Rhode Island,	total membership, 108, lawyers, 13, per cent of total, 12.
Vermont,	total membership, 275, lawyers, 23, per cent of total, 8.4
Wisconsin,	total membership, 133, lawyers, 28, per cent of total, 21.1

showing a decided fluctuation in the proportion of lawyers in different states. It may safely be claimed that the states would be the gainers if the legal profession were more fully represented in the legislatures. The first result of such a change would be a decrease in the volume of legislation which comes from these bodies. The growing multiplicity of these session laws is one of the great evils of the times. Crude measures, special laws, unnecessary legislation

encumber the statute books and complicate the administration of justice throughout the country.

The function of the lawyer in the state legislatures is to formulate the phraseology of these laws, to eliminate those which conflict with each other, to point out those which are redundant and trivial, to prevent rather than to increase the number, and above all to bring the codes of laws of all the states into something like harmony and consistency. Uniform laws on the great fundamental subjects of legislation is the goal towards which all the states of the Union must steadily and persistently aim if we are to expect like conditions of civil liberty, of personal rights and responsibilities and of social progress in all parts of the Union. It is in this great field of co-ordinating the civil and penal codes of all the American states that the lawyer can render his greatest public service and he finds his best professional opportunity. I esteem it the duty of the young lawyer to welcome opportunity to serve his state in its legislative bodies. There is no training open to him which better fits him to construe the law and to serve his clients. It is also a service he owes to the state.

But there is another service, even more important, from which the lawyer is too apt to shrink and where his special training is always needed and too often missing. I refer to the minor legislative and local bodies and boards, which so largely determine for every community whether its government is good or bad, the Aldermanic Boards, the Common Councils, the selectmen, the supervisors, not to speak of the administrative and executive offices.

Here, in my judgment, is the lawyer's greatest field of usefulness; here he ought to be willing to serve the public even at a sacrifice as his contribution to the public weal. Service in these capacities is often eagerly sought by others, not always from the best motives, and is generally shunned by the lawyer. Not that he is indifferent to his duties as a citizen but rather because he fails to realize that this form of public service, relatively humble as it is, is the place where the community stands most in need of the trained and educated man with a true conception of the proper functions of the public officer and the limitations upon his power.

In the earlier days and down to the settlement of the problems growing out of the Civil War the great questions that engrossed the time of Congress were of a character political or constitutional in their nature. The lawyer was peculiarly gifted, by training and habit of mind, to deal with these questions and he did deal with them in masterful manner. A striking change has come in the nature of

the problems that now demand legislation. All the great constitutional issues are determined, great economic issues are taking their place, and are increasingly the subjects of national legislation.

Such matters as the regulation of railway rates, the relations of corporate capital to public rights and private enterprise, the extension of our foreign markets, the organization of labor, questions which have to do with business, with commerce, with national development, with material growth, with social welfare and progress are pressing persistently to the front.

In all these matters the strictly legal training is still helpful and in fact indispensable. But the query may properly be suggested, and more properly in this presence than anywhere else, whether the conventional training given to the American lawyer is sufficiently broad to equip him for the best discharge of the public duties which will continue to fall upon him. It is still a course confined exclusively to the technique of law. May not the question properly be raised whether, in the multiform development of modern civilization and the intimate relationship the lawyer must always bear to it, the special training the law schools give him should not be somewhat broadened—whether he should not be trained in the school of modern economic thought, and along the line of modern business experience as well as in book and case law?

No people on the face of the globe can present such a wonderful record of commercial and industrial growth and prosperity as the people of the United States. We have increased enormously in population but our increase in wealth has more than kept pace with our increase in population. Business methods have changed and the education and training of the lawyer should be such as to enable him to cope with the changed conditions in the business world. This is an age of progress; modern science and the inventive genius of man have revolutionized old methods and the lawyer who expects to succeed in the practice of his profession must study modern methods and prepare himself to meet modern conditions.

Magnificent as has been the work of our profession thus briefly outlined, I would not have it thought that I am in any way belittling the invaluable services which have been rendered to nation and state by members of the other learned professions and by those in business walks of life. But this is an address to lawyers about lawyers. You would expect to find the ocean the dominant feature of a marine picture, and a mountain landscape which contained no mountains would scarcely come up to the standard. But no sense of proportion is lost in a marine landscape, no one supposes that the whole

world is ocean, nor should anyone understand me as meaning or implying that all work that is good has come out of the profession of the law. The truth still remains, however, that the services of the lawyer have been sought for and have proved more valuable than the services of any other profession. Nor are the reasons far to seek. Upon the surface stands the fact that by their training lawyers become close reasoners, and are taught to strip off the non-essential husks to reach the vital kernel. In the framing of the laws, therefore, they are and should be exceptionally expert. Their experience teaches them also what new legislation may be required. But more important than all this is the fact that by contact with all kinds and classes of our citizens they come to know the needs of all, to be tolerant of the shortcomings of all, to unite a tactfulness with that tolerance, to become, in short, "the many-sided man." 'Tis for the reason that lawyers are many-sided men that their services have been, and always will be, in such great requisition in the governmental matters of the nation.

You young men are leaving the portals of your *Alma Mater* and are about to enter upon a career in which success will depend to a very great degree upon your own efforts. You will encounter many hard knocks, possibly many defeats, in the struggle for supremacy, but bear in mind that there is always room at the top for one more and that grit and energy and perseverance, coupled with ability, will in the long run win out. Above all things learn to rely upon your own judgment and bear in mind that it is not the duty of the lawyer to encourage but if possible to prevent litigation. Remember that you are now members of the legal profession, a profession that has given to the nation most of its great men and which has at all times and on all occasions stood for the liberty of the subject and the equality of all before the law. It is indeed a profession in which the most splendid talents and consummate virtue may well press onward eager to bear a part. Its record is one of noble acts, of great achievements and of unselfish devotion. Let no act of yours then sully that record. Bear in mind that our system of government is, in the main, the work of the American lawyer and that, with but few exceptions, from the foundation of our government to the present time "his hand has guided our ship of state and his brain and genius formulated our liberties."

*Hon. Victor H. Metcalf,
Secretary Commerce and Labor.*